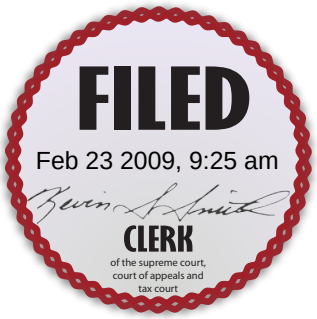

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IN THE COURT OF APPEALS OF INDIANA

ANTONIO C. ARMOUR,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 02A05-0811-CR-640
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE ALLEN SUPERIOR COURT
The Honorable Kenneth R. Scheibenberger, Judge
Cause No. 02D04-0803-FD-227

February 23, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

VAIDIK, Judge

Case Summary

Antonio C. Armour appeals his conviction for Class D felony auto theft. Specifically, he contends that the evidence is insufficient to support his conviction because the evidence does not show that he knew the vehicle was stolen. Finding that Armour knew the vehicle was stolen based on the circumstances surrounding his possession of the vehicle, we affirm Armour's conviction for auto theft.

Facts and Procedural History

Around 2:00 a.m. on January 19, 2008, Daniel Johnson left a Fort Wayne bar and walked to a friend's house. Upon returning to the bar around 7:00 a.m. to retrieve his Chevrolet Camaro, he realized that his car was missing and called the police. A police officer arrived around 9:30 a.m. to take a stolen vehicle report.

Around 2:30 p.m. that same day, Daniel's son, Jeremiah, a co-owner of the Camaro, was driving a friend's Jeep Cherokee around Fort Wayne when he spotted someone driving his Camaro. Jeremiah was able to identify his Camaro because of damage to the front fender and foul words on the hood that his ex-girlfriend had carved. When Jeremiah spotted his Camaro, he ran a stop light, blocked the Camaro from the front, and began yelling. The Camaro went in reverse but became blocked by a car from behind. The Camaro then went forward and collided with the Cherokee, forcing the Cherokee on top of the front end of the Camaro. The person exited the Camaro and fled on foot, leaving the Camaro in drive. Jeremiah started chasing the driver of the Camaro but turned around when he realized that his Camaro was still moving down the street.

Jeremiah was able to catch up with the Camaro and put it in park. Police were called to the scene.

Jeremiah saw the driver's face for at least one minute and provided a description to the police of an African-American male, about 5'9" or 5'10", wearing a black coat and dreadlocks down his neck. The police recovered from the Camaro a cell phone charger and three CDs, none of which belonged to the Johnsons. Armour's prints were discovered on two of the CDs. Police then prepared a photo array for Jeremiah to review. Jeremiah identified Armour's photograph.

The State charged Armour with Class D felony auto theft. Ind. Code § 35-43-4-2.5(b)(1). At Armour's jury trial, defense counsel's theory was that Armour was not the driver of the Camaro. Tr. p. 194 ("The one main fact we dispute is that Antonio was the driver of that Camaro."). Jeremiah identified Armour at trial as the driver of the Camaro. The jury found Armour guilty as charged, and the trial court sentenced him to one and one-half years in the Department of Correction. Armour now appeals.

Discussion and Decision

Armour contends that the evidence is insufficient to support his conviction for auto theft. When reviewing the sufficiency of the evidence, appellate courts must only consider the probative evidence and reasonable inferences supporting the verdict. *Drane v. State*, 867 N.E.2d 144, 146 (Ind. 2007). It is the fact-finder's role, not that of appellate courts, to assess witness credibility and weigh the evidence to determine whether it is sufficient. *Id.* To preserve this structure, when appellate courts are confronted with conflicting evidence, they must consider it "most favorably to the trial court's ruling."

Id. Appellate courts affirm the conviction unless "no reasonable fact-finder could find the elements of the crime proven beyond a reasonable doubt." *Id.* at 146-47 (quotation omitted). It is therefore not necessary that the evidence "overcome every reasonable hypothesis of innocence." *Id.* at 147 (quotation omitted). "[T]he evidence is sufficient if an inference may reasonably be drawn from it to support the verdict." *Id.* (quotation omitted).

In order to convict Armour of Class D felony auto theft, the State was required to prove that he knowingly or intentionally exerted unauthorized control over the Johnsons' Camaro with intent to deprive the Johnsons of the Camaro's value or use. I.C. § 35-43-4-2.5(b)(1). Although Armour argued at trial that he was not driver of the Camaro, he now argues that "[t]here was no evidence that [he] knew the vehicle was stolen when he drove it." Appellant's Br. p. 9-10. He speculates that "[s]omeone who stole the vehicle could have authorized him to drive the vehicle and not told [him] the vehicle was stolen." *Id.* at 10. The evidence does not support such speculation.

In order to determine whether the defendant knows that the property is stolen, we must look to the circumstances surrounding the defendant's possession of the property. *Gibson v. State*, 643 N.E.2d 885, 888 (Ind. 1994); *Purifoy v. State*, 821 N.E.2d 409, 414 (Ind. Ct. App. 2005), *trans. denied*. Here, the record reveals that approximately five hours after the Camaro was reported stolen and twelve hours after Daniel had last seen it, Jeremiah spotted Armour driving the Camaro and tried to block it in with his friend's Cherokee. Armour, surprised, put the Camaro in reverse but was blocked in by another vehicle. Armour and Jeremiah drove forward at the same time, forcing the Camaro

underneath the Cherokee. Armour then fled on foot, leaving the Camaro in drive. These are not the actions of someone who believes he is authorized to drive a vehicle. The evidence is sufficient to prove that Armour knew the Camaro was stolen. We therefore affirm his conviction for auto theft.

Affirmed.

RILEY, J., and DARDEN, J., concur.